

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: McKenzie Dean	Team: Squad #02	CCRB Case #: 202002039	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/27/2020 6:57 PM	Location of Incident: 456 West 25th Street	18 Mo. SOL 4/13/2022	Precinct: 10		
Date/Time CV Reported Wed, 03/11/2020 10:51 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/11/2020 10:51 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Sullivan	25438	963295	PBMS SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Melendez	22515	964162	010 PCT
2. LT Brian Hughes	00000	938684	010 PCT
3. POM Giovanni Messina	29979	966220	010 PCT
4. POM Andrew Cimmino	11452	965991	010 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Sullivan	Abuse: Police Officer James Sullivan searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM James Sullivan	Abuse: Police Officer James Sullivan interfered with § 87(2)(b) use of a recording device.	
C.POM James Sullivan	Discourtesy: Police Officer James Sullivan spoke discourteously to § 87(2)(b)	
D.POM James Sullivan	Discourtesy: Police Officer James Sullivan spoke discourteously to § 87(2)(b)	
E.POM James Sullivan	Force: Police Officer James Sullivan used physical force against § 87(2)(b)	
F.POM James Sullivan	Abuse: Police Officer James Sullivan damaged § 87(2)(b) property.	

Case Summary

On March 11, 2020, § 87(2)(b) filed this complaint with the CCRB over the phone.

On February 27, 2020 § 87(2)(b) double-parked his vehicle on West 25th Street in Manhattan with his friend, § 87(2)(b) in the passenger seat. Police Officer James Sullivan and Police Officer Brian Melendez of the 10th Precinct approached § 87(2)(b) vehicle and asked him and § 87(2)(b) to exit. § 87(2)(b) began recording a video on his cell phone, which he propped up in the cupholder in the center console. § 87(2)(b) and § 87(2)(b) exited the vehicle. Police Officer Sullivan said he smelled marijuana and began searching the vehicle (**Allegation A: Abuse of Authority - Vehicle search**, § 87(2)(g)). During the search, Police Officer Sullivan grabbed § 87(2)(b) phone from the cupholder and stopped the video recording (**Allegation B: Abuse of Authority – Interference with recording**, § 87(2)(g)). Police Officer Sullivan allegedly found marijuana inside the vehicle, which § 87(2)(b) and § 87(2)(b) disputed. Police Officer Sullivan told § 87(2)(b) and § 87(2)(b) “It’s all in between the seats you morons” (**Allegation C and D: Discourtesy - Word**, § 87(2)(g)). § 87(2)(b) approached Police Officer Sullivan to see what he found, and Police Officer Sullivan pushed him (**Allegation E: Force – Physical Force**, § 87(2)(g)). Police Officer Sullivan continued his search of the vehicle, during which he allegedly damaged the glove compartment (**Allegation F: Abuse of Authority - Property damage**, § 87(2)(g)). § 87(2)(b) and § 87(2)(b) each received a C-Summons for unlawful possession of marijuana and § 87(2)(b) received a A-Summons for double-parking (**BR 03**). § 87(2)(b) stated he took a video during the incident, which he did not provide to the investigation, despite attempts by the CCRB to obtain it from him. Body-worn camera (BWC) videos from Police Officer Melendez’s and Police Officer Sullivan’s BWCs were received and are attached in IAs #51-52 (**BR 01; BR 02**) and summarized in IA #53 (**BR 04**).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer James Sullivan searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) was interviewed over the phone on March 18, 2020 (**BR 05**). Police Officer Sullivan was interviewed on February 3, 2021 (**BR 06**). The CCRB was able to initially get in touch with § 87(2)(b) but he was unable to provide a statement at that time and did not respond to subsequent contact attempts.

It is undisputed that Police Officer Sullivan told § 87(2)(b) he smelled marijuana emanating from his vehicle and subsequently searched it. The search yielded a jar that contained candies.

§ 87(2)(b) stated he told Police Officer Sullivan there was no marijuana inside his vehicle. During the search, Police Officer Sullivan found a piece of paper, which had cigarette ash on it, and an ash tray for cigarettes. He also found a “CBD candy” that looked and smelled like chocolate and did not contain marijuana in a small plastic “smell-proof” jar located by the gear shifter, which § 87(2)(b) bought legally in a store. Police Officer Sullivan told § 87(2)(b) the CBD candy was a marijuana edible and the label said it had THC in it. Police Officer Sullivan also asked § 87(2)(b) and § 87(2)(b) if a substance he had found was marijuana residue, to which § 87(2)(b) said, “There is nothing there.” § 87(2)(b) did not smoke inside his car on the date of the incident and there was no marijuana in the vehicle. However, § 87(2)(b) had smoked marijuana in his house three-to-four hours prior to the incident and was wearing the same sweater he was wearing when he smoked earlier.

Police Officer Sullivan stated he noticed the odor of marijuana emanating from § 87(2)(b) vehicle immediately upon approaching it. He did not recall if the odor was of burnt or vegetative marijuana. After § 87(2)(b) and § 87(2)(b) exited and walked to the rear of the

vehicle, Police Officer Sullivan also noticed the odor of marijuana on their persons and it smelled as if they had smoked marijuana earlier that day. Upon returning to § 87(2)(b) vehicle, Police Officer Sullivan still observed the odor of marijuana. Police Officer Sullivan's purpose for searching the vehicle was to find marijuana.

Police Officer Sullivan stated he recovered what appeared to be marijuana edibles in a clear plastic jar from the center console of the vehicle. He believed the decal label on the jar said "banana flavored" and "THC" and it had a strong odor of marijuana. Police Officer Sullivan also found "remnants" of vegetative marijuana on the backseat of the car and on the floor behind the driver seat. The only item vouchered from the search was the jar with the edibles inside. Police Officer Sullivan explained there was not enough "remnants" to collect and voucher. Police Officer Sullivan also observed a rectangular tray either on the floor or on the backseat of the vehicle. He explained that this tray was something marijuana users typically would use to roll marijuana cigarettes.

At 01:00 into Police Officer Sullivan's BWC video (BR 02), he tells § 87(2)(b) his vehicle smells like marijuana and § 87(2)(b) says he and § 87(2)(b) do not have any marijuana. Police Officer Sullivan tells § 87(2)(b) and § 87(2)(b) he can also smell marijuana on their persons. At 02:20 into the video, Police Officer Sullivan finds the jar of alleged marijuana edibles in the center console of the car. He shows § 87(2)(b) and § 87(2)(b) the jar and they deny that the edibles contain marijuana. Police Officer Sullivan tells them the label says "THC" on it. At 06:30 into the video, Police Officer Sullivan shows § 87(2)(b) and § 87(2)(b) a tray he found in the pocket behind the driver seat and says, "You got residue." § 87(2)(b) responds, "There's nothing on there."

In People v. Chestnut, 43 A.D.2d 260 (BR 09), the court held that the smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants.

§ 87(2)(g) § 87(2)(b) stated he smoked marijuana a couple of hours prior to the incident, § 87(2)(g)

Allegation B - Abuse of Authority: Police Officer James Sullivan interfered with § 87(2)(b) use of a recording device.

It is undisputed that when Police Officer Sullivan began searching the vehicle, § 87(2)(b) cell phone was propped up in the cupholder in the center console next to the driver's seat recording and at some point during the search, Police Officer Sullivan interacted with the phone.

§ 87(2)(b) stated that before he exited the vehicle, he began recording a video on his cell phone and placed it in the cupholder next to the driver's seat. When Police Officer Sullivan was searching the vehicle, he grabbed § 87(2)(b) phone from the cupholder, faced it down toward the seat, and turned the camera off.

Police Officer Sullivan stated that during the search, he noticed one of the occupant's phones in the cupholder in the front of the vehicle. He believed that upon picking up the phone to look inside the cupholder, he turned it off by closing it or holding down the side button. He explained he may have done this because the phone may have been recording. When asked why he believed the phone was recording, Police Officer Sullivan said he recalled noticing either a camera roll video or a Facetime call in progress. When asked why he would turn the phone off if it was recording, Police Officer Sullivan said the phone was not in either occupant's possession, so he just turned it off. He did not know if he turned off the phone or exited to the home screen of the phone. After he may have turned the phone off, Police Officer Sullivan placed the phone back in the cupholder.

When asked if there was any reason why he closed the phone, beyond the fact that appeared to be engaged in a Facetime call or a video recording, Police Officer Sullivan said there was no

further reason. He said his reason for interacting with the phone initially was to look underneath it. Police Officer Sullivan said there was no law enforcement related purpose for turning the phone off and he said this may have been a natural reaction to seeing a phone that was not locked.

At 02:15 into Police Officer Sullivan's BWC video (BR 02), he grabs § 87(2)(b) cell phone and places it on the driver seat with the camera lens facing down.

Patrol Guide Procedure 203-09 (BR 10) states that individuals have a right to lawfully observe and/or record police activity, including searches. The right to lawfully observe and/or record police activity extends to individuals in public places, as well as private property in which the individual has a legal right to be present, such as the individual's own property. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual who is observing/recording. Members of service must not intentionally prevent, or attempt to prevent, an individual from recording police activities.

Although § 87(2)(b) did not provide the cell phone video he took during the incident, given that § 87(2)(b) stated Police Officer Sullivan turned off his cell phone recording, that Police Officer Sullivan stated he believed he turned off § 87(2)(b) cell phone recording, § 87(2)(g)

Allegation C – Discourtesy: Police Officer James Sullivan spoke discourteously to § 87(2)(b)

Allegation D – Discourtesy: Police Officer James Sullivan spoke discourteously to § 87(2)(b)

It is undisputed that Police Officer Sullivan referred to § 87(2)(b) and § 87(2)(b) as “morons” when they refuted the findings of his search.

After viewing 06:28 to 06:43 of his BWC video (BR 02) during his CCRB interview, Police Officer Sullivan acknowledged that he called the occupants “morons.” When asked if there was any reason why he called the occupants this term, Police Officer Sullivan said there was not.

Patrol Guide Procedure 200-02 (BR 11) states that officers must render services with courtesy and civility.

Officers may use profanities “in the context of a dynamic situation over which [he or she is] attempting to gain control,” but may not do so when it “[serves] no legitimate purpose but to belittle” a civilian (PD v. Pichardo, DAO DCT Case Number 2015-15012) (BR 12).

While the use of profanity by officers during dynamic or chaotic situations may not constitute misconduct, the point of the incident where Police Officer Sullivan referred to § 87(2)(b)

and § 87(2)(b) as “morons,” did not rise to such a level § 87(2)(g)

Allegation E – Force: Police Officer James Sullivan used physical force against § 87(2)(b)

It is undisputed that during the search, Police Officer Sullivan and § 87(2)(b) argued about whether Police Officer Sullivan found marijuana inside the vehicle. § 87(2)(b) approached Police Officer Sullivan and Police Officer Sullivan pushed § 87(2)(b) in the chest and told him to get back.

§ 87(2)(b) stated that while Police Officer Sullivan and § 87(2)(b) disputed whether marijuana was found during the search, § 87(2)(b) approached Police Officer Sullivan and said, “What are you talking about, there is nothing there” while his hands were in front of him

with his palms facing up. Police Officer Sullivan pushed § 87(2)(b) in his chest with two hands and said, “Don’t get too close to me.” § 87(2)(b) was more than an arms-length away from Police Officer Sullivan before the push and it appeared as if Police Officer Sullivan leaned toward § 87(2)(b) to push him. § 87(2)(b) lost his balance but caught his footing right away by putting a hand on the parked car to his left and another hand on § 87(2)(b) car. Police Officer Sullivan did not instruct § 87(2)(b) to step back before pushing him. § 87(2)(b) told Police Officer Sullivan, “You just told me to come to the truck.”

At 06:55 into Police Officer Sullivan’s BWC video (BR 02), he tells § 87(2)(b) there is “residue” inside the vehicle and § 87(2)(b) refutes this. Police Officer Sullivan says, “It’s all in the backseat.” § 87(2)(b) approaches Police Officer Sullivan and says, “There’s nothing on that tray, Sir.” As he says this, he is speaking with his hands up in front of his chest. Police Officer Sullivan says, “Look right here.” § 87(2)(b) says, “That’s nothing, bro” as he outstretches his hand toward the vehicle. Police Officer Sullivan says, “Alright, step back” as he pushes § 87(2)(b) with at least one hand. § 87(2)(b) keeps his footing and walks away from Police Officer Sullivan.

Police Officer Sullivan stated that when he showed § 87(2)(b) something he found during the search, § 87(2)(b) became “verbally combative” and stepped toward him. § 87(2)(b) voice grew louder, and he came close to Police Officer Sullivan’s face with his face in an aggressive manner. Police Officer Sullivan believed he may have seen § 87(2)(b) clench his fist when he stepped closer to him. When § 87(2)(b) did this, Police Officer Sullivan feared he could be assaulted. Police Officer Sullivan stated he gave § 87(2)(b) an arms-length “slight push nudge” to create space and deescalate the situation. Police Officer Sullivan said he reacted with a push due to the combination of § 87(2)(b) proximity to him and the manner in which he approached him.

Patrol Guide Procedure 221-01 (BR 13) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.

§ 87(2)(g)

Allegation F – Abuse of Authority: Police Officer James Sullivan damaged § 87(2)(b) property.

§ 87(2)(b) stated he believed that Police Officer Sullivan damaged his glove compartment during the search. Before Police Officer Sullivan searched his car, the glove compartment was locked. After the search, the glove compartment did not lock anymore. § 87(2)(b) did not see Police Officer Sullivan damage his glove compartment, but he believed he pulled the door of the glove box during the search when it was locked to check inside.

08:25 to 09:10 of Police Officer Sullivan’s BWC video (BR 02) depicts his search of the glove compartment. When Police Officer Sullivan opens the door to the glove compartment, it does not appear to be locked. After he searches inside the compartment, the door to the glove compartment appears to close with ease.

When asked if the glove compartment was locked when he searched it, Police Officer Sullivan said he believed it opened easily and if it was locked, he would have been unable to search it. When asked if he caused damage to the glove compartment by forcing it open, Police Officer Sullivan said he did not believe he did this to the glove compartment.

After viewing 08:21 to 08:36 of his BWC video, Police Officer Sullivan said the video refreshed his recollection of opening the glove compartment and stated it opened easily and it was not locked. When asked if he damaged the glove compartment by forcing it open, Police Officer Sullivan said that based on the video, he did not believe he did. He did not have an independent recollection of damaging any property in the vehicle.

§ 87(2)(g) § 87(2)(b) stated he did not observe Police Officer Sullivan cause damage to the glove compartment, that Police Officer Sullivan stated he did not believe he caused damage to the glove compartment specifically, and that BWC shows the glove compartment did not appear to be locked upon Police Officer Sullivan opening it and appeared to close with ease following his search of it, § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- Police Officer Patrick Sullivan has been a member of service for four years and has been a subject in two other CCRB complaints and two other allegations, which were not substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- On February 26, 2021, a Notice of Claim request was submitted to the NYC Comptroller's Office, the results of which will be added to the case file upon receipt.

Squad No.: 2

Investigator: Inv. Dean Inv. Dean 3/3/21
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 3/3/2021
Signature Print Title & Name Date

Reviewer:

Signature

Print Title & Name

Date